IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6565 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAVIKANT KALUBHAI VALVI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6565 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR AY KOGJE, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 2

MS PJ DAVAWALA for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 03/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 21-5-2004 by which he is detained under Prevention of Black Marketing

Act. The petitioner is also served with the grounds of detention of the same date. In the grounds of detention, it is mentioned that the petitioner was given a license for running a Fair Price Shop, in order to see that essential articles can be made available to the card holders at a reasonable price. It is alleged that the petitioner has unauthorisedly sold away certain quantity of blue kerosene at a high price. It is alleged that the petitioner has prepared bogus bills in the name of card holders and certain quantity of blue kerosene has been diverted by the petitioner. So many other irregularities are mentioned in the grounds of detention about trying to dispose of sugar, rice etc., unauthorisedly. Considering the aforesaid irregularities and illegalities, alleged to have been committed by the petitioner, the petitioner is detained under preventive detention on the ground that he is indulging in black marketing activities. It is the aforesaid order, which is challenged by the petitioner in this petition.

2) Mr.Prajapati, learned advocate for the petitioner has submitted that against the order of detention, the petitioner has made a representation on 8th June, 2004, which was received by the detaining authority on 10th June, 2004 and the same was forwarded to the State Government on 18th June, 2004. This factual aspect is not in dispute. It is further submitted that the State Government has rejected said representation on 19th June, 2004. However, since the representation is also required to be sent to the Central Government but according to the petitioner, the State Government has not forwarded the same to the Central Government and, therefore, on this ground, this petition is required to be allowed.

3) On behalf of the Central Government, affidavit-in-reply has been filed, wherein it is stated that the Central Government has not received any representation from the State Government and therefore, there was no question of taking any decision on such representation. However, during the course of argument, Ms.Davawala, who is appearing for Central Government, has pointed out that after filing affidavit-in-reply, representation of the petitioner is received by the Central Government from the State Government on 7-7-2004 in the concerned department, which was forwarded to the relevant department and ultimately, on 9-7-2004 said representation was rejected by the Central Government. Therefore, in my view, it cannot be said that there is any delay on the part of the Central Government in deciding representation of the petitioner.

4) On behalf of State Government, an affidavit-in-reply has been filed, in which it is stated that the representation of the petitioner was rejected on 19-6-2004, however, there is no reference as to on which date representation of the petitioner was sent to the Central Government. During the course of argument, Mr.Kogje, learned AGP, after going through the file, has submitted that the State Government has dispatched the representation of the petitioner to the Central Government on 21st June, 2004 by Speed Post. Mr.Kogje has frankly submitted that there is nothing on record to suggest that the representation of the petitioner was sent by Speed Post on the aforesaid date. If such representation is sent by Speed Post, there must be some evidence available in the file, but surprisingly no such evidence is available. Therefore, it is difficult accept the submission of Mr.Kogje that the representation of the petitioner was sent to the Central Government on 21st June, 2004. As there is no proper explanation available with the State Government, it seems that the State Government has not forwarded the representation of the petitioner to the Central Government by Speed Post. There is nothing on record even to suggest that in which manner the Central Government has received the representation of the petitioner. As the Central Government has powers to revoke the order of detention, it is the duty of the State Government to send a copy of the representation of the detenu forthwith to the Central Government, unfortunately, the same is not done in this matter.

5) Considering the aforesaid aspect of the matter, in my view, the State Government is not in a position to point out as to on which date and in which manner, the representation of the petitioner was sent to the Central Government. This aspect is also not dealt with in the affidavit-in-reply filed by the State Government, therefore, on the ground of unexplained delay in forwarding the representation of the petitioner to the Central Government, this petition is required to be allowed. It is a settled position of law that the representation of the detenu is required to be decided forthwith and State Government is required to send the same to the Central Government immediately, as the person is detained under preventive detention.

6) For the foregoing reasons, this petition is allowed. The continuous detention of the detenu is held to be illegal and the detenu, Ravikant Kalubhai Valvi is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made

absolute.

(P.B.Majmudar,J.)

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